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7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
10

11 GERALD ARMSTRONG,

Case No. CV-N-97-670 ECR (RAM)

12 Plaintiff,

13 vs.

14 DAVID MISCAVIGE, et al.,

15 Defendants.
16 _____/

PLAINTIFF'S BRIEF FOR
EVIDENTIARY HEARING
IN SUPPORT OF CLAIM
OF PHYSICAL PRESENCE
AND INTENT TO REMAIN
AS OF NOVEMBER 19, 1997

17
18 I. Background

19 This action was commenced in this Court on November 24, 1997,
20 by filing of Plaintiff Gerald Armstrong's Complaint (#1) for Libel
21 and Defamation, and for other Relief. Defendants Religious
22 Technology and Church of Scientology International timely filed
23 (#9, #10) substantively identical motions to dismiss for lack of
24 subject matter jurisdiction, for lack of personal jurisdiction,
25 for improper venue and for fugitive disentitlement. This court by
26 Minute Order (#41) dated and filed on July 9, 1998 denied so much
27 of motions #9 and #10 "to the extent they seek dismissal for lack
28 of personal jurisdiction, improper venue, and fugitive
disentitlement."

1 The referenced Order of 7/9/98 addressed (#41, 3rd page,
2 upper one-third) the sole remaining claimed ground for dismissal,
3 subject matter jurisdiction, in this fashion:
4

5 * * * * *

6 The asserted basis for our subject matter
7 jurisdiction is diversity of citizenship. Plaintiff bears
8 the burden of demonstrating subject matter jurisdiction.
9 Lew v. Moss, 797 F.2d 747, 751 (9th Cir. 1986). In this
10 case Plaintiff claims to have been a citizen of Nevada at
11 the time he filed suit. Id. at 750 (citizenship is
12 determined at time of filing). A U.S. citizen is a
13 citizen of a state for diversity purposes if he is
14 domiciled there; that is, if he has established a fixed
15 habitation or abode in a particular place, and intends to
16 remain there permanently or indefinitely. Id. at 749-50.
Physical presence is a central and ordinarily necessary
factor in determining domicile. Hendrix v. Naphtal, 971
F.2d 398, 400 n.2 (9th Cir. 1992). Where a party has
recently moved, physical presence in the new state is
required to effectuate a change in domicile and a person's
established domicile is the presumptive one until a new
one is acquired. Lew, 797 F.2d at 750-51. Additionally,
a U.S. citizen domiciled outside the United States may not
maintain a diversity action. Brady v. Brown, 51 F.3d 810,
815 (9th Cir. 1995).

17 Plaintiff does not dispute that until November 1997
18 he was domiciled in California. Mr. Armstrong must
19 therefore demonstrate a physical presence in Nevada as of
20 November 24, 1997, as well as a fixed habitation or abode
21 in Nevada and an intent to remain here permanently,
22 sufficient to overcome the presumption that he was then
23 domiciled in California. Although Defendants assert that
24 Plaintiff is still legally domiciled in California, and
25 offer considerable evidence that he has been living in
26 British Columbia since no later than December 1997, Mr.
Armstrong's declaration states that he works in Nevada,
possesses a Nevada driver's license, and keeps his
personal property in Nevada Compare Armstrong Decl. (#10,
Ex. H) with Armstrong Decl. at ¶ 9 (#21). He also states
that he "stays" in Nevada, and has done so since November
1997, but is afraid of specifying his address because he
fears Defendants' retaliation. Armstrong Decl. at 21
(#21).

27 [Counsel for plaintiff did himself suggest [#40: Plf
28 Opp to Rule 12(b) Mot Dism, 13:21-24] that "The Court may
wish to defer ruling upon any, or upon each of the col-

1 lective codefendants' Rule 12(b) challenges until further
2 materials are presented, after discovery is conducted, or
3 after evidence is received at trial (cites omitted)."]

4 Since the threshold question in any federal lawsuit
5 is our subject matter jurisdiction, we will set an
6 evidentiary hearing to resolve the dispute issues of
7 material fact outlined above.

8 * * * * *

9 The court concluded its Minute Order of 7/9/98 (#41) with a
10 recitation directing an evidentiary hearing for Tuesday, August
11 18, 1998 at 10:00 a.m. "to consider the subject matter
12 jurisdiction in this case". Plaintiff by an August 3, 1998 ex
13 parte Motion for Protective Order filed on August 4, 1998 (#48),
14 annexed as GA 9/2/98 Exhibit A and incorporated herein as are
15 successive exhibits, advised the court that plaintiff's attorney
16 (George Abbott) ". . .was stricken with an as yet undiagnosed
17 collapse at his home early on July 31 and was taken by ambulance
18 to Carson-Tahoe Hospital. . .will be confined for several more
19 days although his condition appears to be. . .no longer critical".
20 A declaration of Mary Abbott with an annexed statement of Dr. Rex
21 T. Baggett., diplomate certified in critical care medicine
22 accompanied the GA 9/2/98 Exhibit A. This Court by Minutes of
23 the Court entered on August 4, 1988 (#49) by U.S. Magistrate Judge
24 Robert A. McQuaid, Jr., annexed as GA 9/2/98 Exhibit B: ordered
25 Plaintiff (Abbott) to "appear at a time convenient to counsel for
26 Defendant and counsel for Plaintiff for his deposition between
27 August 19, 1998, and August 27,1998"; further ordering vacation of
28 the evidentiary hearing first set before the district judge for

1 August 18 (#41). Magistrate Judge McQuaid ordered rescheduling
2 the same for hearing on Wednesday, September 2, 1998, at 10:00
3 a.m. "for consideration of the court's subject matter. As
4 previously indicated, the Plaintiff shall have two (2) hours for
5 presentation of evidence, testimony and argument."

6
7 Also bearing on the September 2 evidentiary hearing: a
8 request by plaintiff's counsel resulted in a "Telephonic Discovery
9 Conference" held on August 26, 1998 from 4:30-4:50 p.m. among
10 Magistrate McQuaid, plaintiff attorney Abbott (at Minden) and
11 defendants' attorneys Sandy Rosen (at Nashville) and Patrick
12 Flanagan (at Reno). Resulting Minutes of the Court (#67), with
13 conditions imposed, are by copy preserved as the annexed GA
14 9/02/98 Exhibit C.

15
16 Document: The first Armstrong deposition; excerpts

17 Plaintiff Armstrong was deposed on Monday, August 24, 1998
18 by Attorney Rosen at the "jury room" on the sixth floor of the new
19 U.S. Courthouse at 400 South Virginia Street, Reno, Nevada during
20 an allotted \pm 2 hours on Monday, August 24, 1998.

21 Plaintiff and his counsel, after review of the first
22 Armstrong deposition, submit herewith marked GA 9/02/98 Exhibit D
23 a document styled "Plaintiff's Excerpts From August 24, 1998
24 Deposition of Gerald Armstrong", which excerpts are believed by
25 plaintiff and his counsel to be particularly and directly
26 responsive to the 7/7/98 Minute Order (#41, page 3, 2d sentence,
27 penult para) that "Mr. Armstrong must therefore demonstrate a
28 physical presence in Nevada as of November 24, 1997, as well as a

1 fixed habitation and an intent to remain here permanently
2 The questions selected by defense attorney Rosen and the answers
3 supplied by plaintiff Armstrong, plaintiff urges, conclusively
4 demonstrate the "physical presence (of Mr. Armstrong) in Nevada as
5 of November 24, 1997" such date does follow on the initial taking
6 up of residence and domicile here on November 17, 1997. The
7 many steps taken pre-Nevada — from late in 1995 up through mid-
8 November, 1997 — to divest himself of all of the worldly (auto,
9 household goods, furniture, etc.) goods of value in California—
10 excepting his computer, "papers and writings", the "clothes on my
11 back" and a "junky" container collection; locating the place and
12 means to afford a residence, a "dwelling place" and a work place;
13 completing the laborious task of moving from California (and
14 British Columbia) to Nevada by a truckload, carloads, plus by air
15 and hand luggage, the papers, writings, and files of value —
16 manifests determination to leave behind, if any there were, the
17 last vestiges of California domicile.

18
19 Additional manifestations of intent

20 "Picking domicile" and "intentions regarding such" appear to
21 this plaintiff to be mixed, indeed intermixed questions.
22 Answers, it emphatically follows, draw on "facts" regarding both,
23 and each.

24 The plaintiff-deposition witness in the foregoing writings
25 and from an objective reading of the "Excerpts" set out in GA
26 9/2/98 Exhibit , we observe again, has met the physical aspect
27 requirements to unqualifiedly establish Nevada as the intended
28

1 (and achieved) destination of post-California domicile of Gerald
2 Armstrong.

3
4 Asked, and unasked questions

5 The questioner (attorney Rosen) at the August 24, 1998
6 deposition did ask one important "Why?" question of Gerald
7 Armstrong, viz (GA depo, 62:21-24):

8 * * *

9
10 Q Okay. Tell me why — why was it that you made
11 the decision that you wanted to live in Nevada, as
opposed to California or Vancouver or Seattle or
anyplace else.

12 Why Nevada?

13 A I think it because at the time, I felt
14 that this is where — where I would be relatively
15 safe, and be able to effectively combat the attacks
from Scientology.

16 Q You thought Nevada was a safer place to live
than in Seattle or Wyoming or —

17 A Well, —

18 Q — or Vancouver, B.C.?

19 A No, no. In fact, I think that I am —
20 actually much safer in Canada than I am here. And
21 that's a — has been an increasing awareness through
22 the — through these many months. But that if I was to
do anything effective to combat the Scientology
onslaught, that I certainly couldn't be in California.
And this was a place where I at least I had some ties
and —

23
24 Q Ties being Mr. Abbott?

25 A Mr. Abbott and — and other people here.

26 * * *

1 Additional "why ?" questions

2
3 A pair of "why?" questions even more germane, perhaps more
4 pertinent (but studiously, carefully, intentionally avoided, or
5 deftly walked around, by defendants' interlocutor Rosen, viz:

6 Q one: Mr. Armstrong, why not California?

7 Q two: Why your "lifestyle"? Why, after 29
8 years, are you tilting with Scientology? Why Mr.
9 Armstrong. . .are you. . . Armstrong? Today's
10 Armstrong?
11

12 Additional background documents

13 The complaint filed in these proceedings touches on
14 defamation, litigation habits of Scientology and their lawyers,
15 the "religious" nature of Scientology, this organization's assault
16 on the judiciary and justice itself and 17 years of "fair game" to
17 destroy the man here who seeks peace and justice.

18 Any individual or entity enmeshed with, or in, Scientology
19 paramilitary methods of operation in the September 2, 1998
20 evidentiary proceeding, as in future foundational Scientology vs.
21 Anybody / Anybody vs. Any Scientology matters, should have,
22 indeed must have knowledge of the existence and content of basic,
23 of core, documents.

24 The documents identified here are designed to respond to the
25 initial "want" list. They follow and complement the four
26 documents identified as GA 9/2/98 Exhibit A thru GA 9/2/98 Exhibit
27 D, supra.
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Exhibit ident "Popular" title

I. GA 9/2/98 Exhibit E: 1984 BRECKENRIDGE JUDGMENT, being a "Memorandum of Intended Decision (with Appendix)" signed by Judge of the Superior Court Paul G. Breckenridge, Jr., on June 20, 1984, filed at Los Angeles on June 22, 1984. Case No. 420153, in the Superior Court of the State of California for the County of Los Angeles.

II. GA 9/2/98 Exhibit F: 1991 CALIFORNIA COURT OF APPEAL AFFIRMATION , being a "Decision" affirming the 1984 BreckenRidge Judgment, issued by Associate Justice Danielson, concurred in by Klein, P.J., and Hinz, J., filed on July 29, 1991 in California District 2 Court of Appeal, in Case Nos. B025920, B038975. Review Denied October 178, 1991.

III. GA 9/2/98 Exhibit G: 1994 DECLARATION OF DAVID MISCAVIGE, being a document executed under penalty of perjury dated February 8, 1994, at Riverside County, California.

IV. GA 9/2/98 Exhibit H: "RESIDENCE" AND U.S. IMMIGRATION LAWS, being portions of Title 8 USCS § 1101 "Definitions" including sub-§(31) defining the term "permanent"; and sub-§ (33) defining the term "residence".

V. GA 9/2/98 Exhibit I: IRS FORM 1023, TAX EXEMPT APPLICATION, being excerpts from Church of Scientology's Form 1023 Application to the Internal Revenue Service for

1 tax-exempt status, in connection with the settlement of its
2 ongoing litigation with IRS in 1993. With **very heavy, untrue,**
3 **and sworn** (under penalty of perjury) slanderous, libelous,
4 defamatory statements made of Gerald Armstrong.
5

6 VI. GA 9/2/98 Exhibit J: SCIENTOLOGY'S WAR AGAINST JUDGES
7 being an article printed in The American Lawyer, December, 1980.
8 A recounting of the "attack" strategy of Scientology lawyers
9 involved events which took place following the August 15, 1978
10 indictment of 11 Scientologists on charges of electronically
11 intercepting oral IRS communications, forging government passes,
12 illegally entering government buildings, recruiting Scientologists
13 to infiltrate the government, stealing records belonging to the
14 IRS, the United States Justice Department, and the United States
15 Attorney of the District of Columbia
16

17 VII. GA 9/2/98 Exhibit K: FEDS EYE ALLEGED SECT PLOT TO
18 CORRUPT U.S. JUDGE, Clearwater Sun article of January 22, 1984
19 reporting, inter alia that: the U.S. Attorney's Office in Tampa is
20 investigating a suspected 1982 extortion plot by the Church of
21 Scientology to entrap and compromise a Tampa federal judge who
22 presided over a suit against the Clearwater-based sect. The
23 purported plot involved an attempt to lure U.S. District Judge
24 Ben Krenzman aboard a boat Pinellas Suncoast where prostitutes and
25 drugs were to be used to put the judge in a compromising position
26 reportedly was authorized personally by reclusive Scientology
27 founder L. Ron Hubbard, confidential sources told the Sun.
28

1 VIII. GA 9/2/98 Exhibit L: CLEARWATER (FLORIDA) SUN, "SCHEME
2 OF SCIENTOLOGY TO ENTRAP FEERAL JUDGE, January 23, 1984 recounting
3 an attempt to lure U.S. District Judge Ben Krentzman aboard a boat
4 equipped with drugs, prostitutes, hidden cameras, and microphones.

5 At the time Krenzman was presiding over a \$16 million lawsuit
6 filed against the Scientology "sect" by one Tonja Burden, who
7 sought compensation for alleged mental abuse, brainwashing,
8 imprisonment and fraud, according to public documents. Sources
9 told the Sun that Scientology officials anticipated an unfavorable
10 ruling in the case and the elaborate extortion operation was put
11 into effect to compromise Judge Krentzman.
12

13 IX. GA 9/2/98 Exhibit M: PRIOR SECT TRY AT JUDGE REPORTED,
14 Clearwater Sun story of Tuesday, January 24, 1984. Because Tampa
15 Judge Krenztnan (Chief Judge of Florida's 32-County Middle
16 District of United States Distralt Court) enmeshed in prostitute-
17 drug compromise effort and case not finished, attention turned
18 to District of Columbia. Four years ago (1980) a U.S. District
19 Court Judge stepped down from a federal conspiracy trial involving
20 the controversial Scientology sect, involved was indictment of 11
21 Scientology on a number of federal charges, including obstruction
22 of justice. Trial of the 11 defendants began on August 15, 1978.
23 The first two judges assigned to the case, D.C. District Court
24 Judge George Hart, Jr. and Judge Louis Overdorfer — stepped down
25 during the course of the protracted proceedings, bowing to defense
26 motions for dismissal. Shortly after Feb. 5, 1979 when Oberdorfer
27 stepped down, the case fell to Judge Charles Richey, a jurist with
28

1 respected national reputation. Ultimately, Richey was himself
2 hassled into physical disability, publicity, mortification.
3

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5 X. GA 9/2/98 Exhibit N: THE TWO FACES OF SCIENTOLOGY, The
6 American Lawyer, July/August 1992, by William W. Horne. In this
7 8056 word, 18 page document. Begins The Church of Scientology
8 uses private detectives and bulldog litigators to pursues its
9 numerous detractors. It also hires low-key establishment lawyers
10 who work quietly within the system. So who is directing the \$416
11 million libel suit against Time. "Fair game", etc. A lengthy
12 article on the involvement of lawyers, their roles, their tactics,
13 effectively also their ethics.

14
15 XI. GA 9/2/98 Exhibit O: DECLARATION OF UNITED STATES
16 DISTRICT JUDGE JAMES M. IDEMAN, dated June 17, 1993 at Los
17 Angeles, California. Recitation of 8 years of Scientology
18 procedural moves in support of a petition apparently conducted
19 against one "Mayo" leader of a competitive sect. Exhibit "A" to
20 the declaration is a photo of clerk with filings; exhibit "B" copy
21 of clerk's docket with 81 pages, 1,737 filings.

22
23 XII. GA 9/2/98 Exhibit P: Defendants' Reno attorney, Patrick
24 Flanagan and his New York-Los Angeles-San Francisco legal
25 associates, by the August 7 Points and Authorities annexed to
26 Exhibit P's Motion for Leave to Conduct Discovery have (a) made
27 clear this current Reno RCT-CSI attorney, is already skilled in
28 wholly misrepresenting and misstating telephone conversations with

1 the Abbott office, including some of those recorded (with notice);
2 and (b) by the August 7 Discovery Motion are seeking -- in
3 conventional paranoiz-achizo Scientology fashion -- to establish
4 that Abbott surgeon-diplomate Dr. Rex Baggett and 48-year federal
5 court veteran George Abbott (even though apparently more familiar
6 with and bound by FRCP Rule 11 than any of SCI-RTC's legal
7 coterie) have joined to "fake" and pretend" as of August 6 some
8 spurious Abbott July 31 cardiac-related set back.

9 The Flanagan-CSI-RTC unconcealed slanderous and libelous
10 implied accusation against Messrs. Baggett and Abbott could not
11 have been more perfectly timed: the clearly implied and declared
12 Baggett-Abbott fraud and criminal fakery made by Attorneys
13 Flanagan et al as of August 7, 1998 (please see the six-page
14 defendants' Flanagan-et al Motion for Leave to Conduct Discovery,
15 with P & A, Exhibit P hereto.) Then, please note at page 2 of
16 Exhibit Q the Flanagan-et al recital that :

17 * * *

18 "The grounds for this motion are that there are
19 good reasons to believe that Mr. Abbott's claim
20 of medical infirmity. . .may not be completely
21 accurate (i.e., "Abbott is lying. So are his
doctors.")

22 * * *

23 So spoke these top Scientology types as of August 7, 1998 .

24 Another "voice" was "heard" as of the same August 7, 1998:

25 * * *

26 ". . .This person ("George Abbott" has an
27 implantable cardiac pacemaker. . . Model number
28 2360L Serial number 181840 implant date. . .
7 Aug 98." (please see Exhibit Q, this addendum.)

1 So much for Scientology's 1998 going to the absolute outer limits
2 of "Fair Game".

3 Dated this 1st day of September, 1998.

4 Plaintiff Gerald Armstrong

5
6 By George W. Abbott
7 George W. Abbott
8 His attorney
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